



a **one** communications company

1200 Greenbrier Street • Charleston, WV 25311 • 304-720-2101 • Fax: 304-720-2121

DOCKET FILE COPY ORIGINAL

October 9, 2008

Received & Inspected

OCT 10 2008

**VIA OVERNIGHT MAIL**

FCC Mail Room

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743

**Re: CC Docket No. 96-45  
FiberNet, LLC's Petition for Waiver**

Dear Ms. Dortch:

Pursuant to Federal Communications Commission Rule 1.3, enclosed for filing please find the original and five (5) copies of FiberNet, LLC's ("FiberNet") "**Petition for Waiver**" of FCC Rule Section 54.307(c)(4).

Please acknowledge receipt of this filing by date-stamping the extra copy of this filing and returning it to me in the enclosed self-addressed stamped envelope.

Please address any inquiries or further correspondence regarding this filing to my attention at 1200 Greenbrier Street, Charleston, West Virginia 25311. Should you need to contact me directly, I may be reached by telephone at (304) 720-2159, by facsimile at (304) 720-2121, or by e-mail at [shamula@wvfibernet.net](mailto:shamula@wvfibernet.net).

Sincerely,

STEVEN HAMULA  
Director of Regulatory Affairs  
FiberNet, L.L.C.

SH/s  
Enclosures

No. of Copies rec'd 0 + 5  
List A B C D E

328 Averille Street  
Beckley, WV 25801  
304.929.2101

1102 Third Avenue  
Huntington, WV 25701  
304.781.2101

221 E. Antietam Street  
Hagerstown, WV 21740  
240.625.9101

225 South Maple Ave.  
Greensburg, PA 15601  
724.216.9101

142 Gayle Park, Suite 201  
Johnstown, PA 15901  
814.361.2101

900 Fairmont Avenue, Suite 201  
Fairmont, WV 26534  
304.333.2101

301 Grand Central Avenue, Suite C  
Vienna, WV 26103  
304.865.2101

38 Fifteenth Street, Suite 200  
Wheeling, WV 26003  
304.230.2101

114 12th Street  
Altoona, PA 16601  
814.296.2101

113-115 Baltimore Street,  
Suite 204  
Cambridge, WV 24502  
304.876.9101

Received & Inspected

OCT 10 2008

FCC Mail Room

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In re )  
 )  
FIBERNET, LLC )  
 ) CC Docket No. 96-45  
Petition for Waiver of FCC Rule )  
Section 54.307(c)(4) )

**PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED**

FiberNet, LLC (“FiberNet”), by counsel and pursuant to Section 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3, hereby respectfully requests that the Federal Communications Commission (“FCC”) grant a waiver of Section 54.307(c)(4). Specifically, FiberNet requests that the FCC accept FiberNet’s loop count information as of March 31, 2008 for the calculation of Interstate Access Support, which is being filed after the deadline established for the submittal of such information, so that vital universal service funding can be received.<sup>1</sup> In support of this Petition, FiberNet respectfully states the following:

**I. BACKGROUND**

FCC Rule Section 54.307(b) states that in order to receive support, a competitive eligible telecommunications carrier like FiberNet must report the number of working loops it serves in a service area pursuant to the schedule set forth in Section 54.307(c). In order to be eligible to receive Interstate Access Support for the instant reporting period,

---

<sup>1</sup> FiberNet files both High Cost and Interstate Access Support loop count information with the Universal Service Administrative Company. The late filed loop count information at issue herein involves Interstate Access Support.

FiberNet was required to submit the working loop data required by Section 54.307(b) as of March 31 of the current calendar year by no later than June 30, 2008.

Historically, FiberNet has been timely in the submittal of its loop count information. However, with respect to the instant reporting period, the FiberNet employee that was previously charged with the responsibility of compiling and submitting its loop count information had resigned, and the new employee assuming this responsibility simply confused the loop count reporting deadline associated with Interstate Access Support -- June 30<sup>th</sup> -- with the loop count reporting deadline for High Cost support, which was July 31<sup>st</sup>. Consequently, FiberNet submitted its loop count information for both Interstate Access Support and High Cost support to the Universal Service Administrative Company ("USAC") on July 30, 2008 thereby inadvertently missing the June 30<sup>th</sup> deadline for the submission of loop count information for Interstate Access Support.

## **II. ARGUMENT**

Because FiberNet is a small, regional competitive local exchange carrier ("CLEC"), universal service fund support is critically important to the continued maintenance of FiberNet's existing operations as well for the future expansion of FiberNet's operations in West Virginia. In this regard, this universal service fund support will assist and allow FiberNet to further its goal of providing competitive choice and quality telecommunications service offerings to customers located in the rural and high cost areas of West Virginia. Given this fact, it would clearly be contrary to the public interest and to the goals of the Telecommunications Act of 1996 to penalize FiberNet by

not allowing it to receive vital universal service fund support merely because the loop count submittal deadline of June 30, 2008 was inadvertently missed.

As a general matter, FCC rules may be waived for good cause shown.<sup>2</sup> Certainly, FiberNet understands that the FCC's rules are presumed to be valid.<sup>3</sup> However, the FCC may exercise its discretion to waive a rule where the particular facts present in a given case make strict compliance inconsistent with the public interest.<sup>4</sup> Additionally, the FCC may take into account considerations of hardship, equity, or the more effective implementation of overall public policy on an individual case basis.<sup>5</sup> Waiver of the FCC's rules is therefore appropriate where special circumstances warrant a deviation from the general rule, and where such deviation will serve the public interest.

In FiberNet's view, the underlying purpose of the FCC's rule governing the submittal of loop count information would not be served by its strict application in the instant case. As noted above, FiberNet's late submittal of its loop count information was the result of an honest mistake made by an inexperienced employee who in good faith assumed that the loop count information for Interstate Access Support was due at the same time as the loop count information for High Cost support.<sup>6</sup> Certainly, no other person or entity will be prejudiced by the granting of the requested waiver, and only those customers currently lacking in competitive choice in the rural and high cost areas of West Virginia will be harmed by its denial. Without question given the attendant

---

<sup>2</sup> 47 C.F.R. § 1.3

<sup>3</sup> WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>4</sup> Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>5</sup> WAIT Radio, 418 F.2d at 1159; Northeast Cellular, 897 F.2d at 1166.

<sup>6</sup> FiberNet would respectfully note that filing due date for loop count information for loops served as of March 31st of the current year is July 31<sup>st</sup> of each year for all high cost components (HCL, LSS, ICLS, and HCM) except for IAS, which requires that the filing due date for loops served as of March 31st of the current year be the last business day of June each year.

circumstances, the granting of the requested waiver in this instance would clearly serve and further the public interest.

In addition, it is worth noting that the Universal Service Program is intended in part to promote competitive choice and access to advanced telecommunications services in areas where the costs of providing those services have been historically high. FiberNet's offering of telecommunications service to the rural and high cost areas of West Virginia would certainly further this goal. Clearly, FiberNet is entitled to receive universal service fund support at issue, and such support will enable FiberNet to continue to expand its operations in an effort to provide both competitive choice and quality telecommunications service to those West Virginians located in rural and high cost areas.

### **III. REQUEST FOR EXPEDITED ACTION**

FiberNet respectfully requests that the FCC take expedited action on this Petition in order to avoid any delay in the receipt of universal service fund support. In the absence of expedited action by the FCC, FiberNet may be compelled to delay or potentially reconsider plans to further expand its telecommunications services on account of the failure to timely receive the universal service fund support at issue herein. In short, FiberNet respectfully asserts that special circumstances exist in the instant case which warrant deviation from the deadline established for the submittal of loop count data pursuant to Section 54.307(c)(4), and further that such deviation, if permitted by the FCC, will serve the public interest.

#### IV. CONCLUSION

For all the reasons hereinabove stated, FiberNet respectfully requests that the Federal Communications Commission grant a waiver of Section 54.307(c)(4) pertaining to the deadline established for the submittal of loop count data required for the receipt of Interstate Access Support. FiberNet similarly requests that the Federal Communications Commission permit the acceptance of FiberNet's loop count information by USAC so that FiberNet may receive vitally important Interstate Access Support to which it would otherwise be entitled.

Respectfully submitted this 9<sup>th</sup> day of October, 2008.

FiberNet, LLC

By Its Attorney:

A handwritten signature in black ink, appearing to read 'Steven Hamula', is written over a horizontal line.

STEVEN HAMULA, ESQUIRE

FiberNet, LLC

1200 Greenbrier Street

Charleston, WV 25311

Tele: (304) 720-2159

Fax: (304) 720-2121

E-mail: shamula@wvfibernet.net